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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 STARBUZZ TOBACCO, INC., a) Case No.: 8:19-cv-00408 JVS (DFMx)
11 California corporation,)
12)
13 Plaintiff,) **PROTECTIVE ORDER**
14 vs.) **GOVERNING DISCLOSURE OF**
15) **CONFIDENTIAL INFORMATION**
16 GOLD STAR TOBACCO INC., a New)
17 Jersey corporation; SAMER)
18 ABDELMASEH, an individual; and) [Discovery Document:
19 DOES 1-10, inclusive,) Referred to Magistrate Judge
20) Douglas F. McCormick]
21)
22 Defendants.)
23)
24)
25)
26)
27 AND RELATED COUNTERCLAIM)
28 AND THIRD PARTY COMPLAINT)

1 WHEREAS, Plaintiff/Counter-Defendant STARBUZZ TOBACCO, INC.
2 (“STARBUZZ”), on the one hand, and Defendant/Counterclaimant GOLD STAR
3 TOBACCO INC. (“GOLD STAR”), and Defendant SAMER ABDELMASEH
4 (“ABDELMASEH”) (GOLD STAR and ABDELMASEH are collectively referred
5 herein as the “Defendants”), (all of the above being, collectively, the “Parties”),
6 believe that in the course of this action certain information, documents, and
7 testimony likely to be disclosed and produced through discovery may constitute or
8 incorporate confidential commercial information, research or development and/or
9 trade secrets within the meaning of Federal Rule of Civil Procedure 26(c);

10 WHEREAS, the Parties believe that entry of a protective order pursuant to
11 Federal Rule of Civil Procedure 26(c) would best protect their interests while
12 facilitating discovery in this action; and

13 WHEREAS, the Court finds good cause exists for the entry of this Protective
14 Order in this action pursuant to Federal Rule of Civil Procedure 26(c) in order to
15 protect confidential commercial information, research and development, and/or
16 trade secrets.

17 IT IS HEREBY ORDERED, pursuant to Federal Rule of Civil Procedure
18 26(c), that this Protective Order shall govern the treatment and handling of any
19 information produced or disclosed by any Party or non-Party (“the Producing
20 Party”) to this action, including without limitation, Rule 26 disclosures,
21 documents, depositions, deposition exhibits, interrogatory responses, responses to
22 requests for admission, and testimony (such information and/or documents shall
23 hereinafter be referred to as “Confidential Material”) provided it is designated (or,
24 within the appropriate time limitation, is pending designation) as being
25 Confidential Material as required by this Protective Order.

26 It is further ordered that:

27 1. Any Producing Party may designate any Confidential Material as
28 “CONFIDENTIAL” if such producing party in good faith believes that such

1 Confidential Material contains confidential or proprietary information, including
2 information in written, oral, electronic, graphic, pictorial, audiovisual, or other
3 form, whether it is a document, information contained in a document, item
4 produced for inspection, information revealed during a deposition, information
5 revealed in an interrogatory answer, or otherwise.

6 2. Any Producing Party may designate any Confidential Material as
7 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” if such producing party in
8 good faith believes that such Confidential Material contains confidential,
9 commercially sensitive, or proprietary information related to any of the following:
10 technical data, research and development information, marketing or other business
11 plans, product or service information, customer information, trade secrets,
12 competitive information, or financial information of the Producing Party,
13 including, without limitation, sales and cost information or any other information
14 of such sensitivity to warrant “Confidential—Attorneys’ Eyes Only” treatment,
15 including, information in written, oral, electronic, graphic, pictorial, audiovisual, or
16 other form, whether it is a document, information contained in a document, item
17 produced for inspection, information revealed during a deposition, information
18 revealed in an interrogatory answer, or otherwise.

19 3. A Producing Party may designate any document or other tangible
20 information or thing as “Confidential” or “Confidential—Attorneys’ Eyes Only”
21 by stamping a conspicuous place thereof with the legend CONFIDENTIAL or
22 CONFIDENTIAL—ATTORNEYS’ EYES ONLY, respectively. For example, in
23 the case of a document, a producing party may so mark the first page of a
24 multipage document and each page thereafter that actually contains Confidential
25 Material. In the case of other tangible items, a producing party may so mark any
26 appropriate location. For example, in the case of a computer disk, a producing
27 party may so mark the disk cover.

1 4. The terms of this Protective Order are applicable to Confidential
2 Material produced by a non-party and designated “CONFIDENTIAL” or
3 “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” only when the producing
4 non-party has a proprietary interest or other right in such Confidential Material, or
5 where the producing non-party is contractually obligated to maintain the
6 confidentiality of such Confidential Material. A producing party may designate
7 documents, information, or things disclosed at a deposition of a producing party or
8 one of its present or former officers, directors, employees, agents, or independent
9 experts retained for purposes of this litigation as “Confidential” or “Confidential—
10 Attorneys’ Eyes Only” on the record during the deposition; or by notifying all
11 parties in writing of the specific item so designated, within twenty one (21) days
12 of receiving a copy of the deposition transcript, of the specific exhibits or lines and
13 pages of the transcript that are believed in good faith to contain Confidential
14 Material.

15 a. If a producing party designates such materials as “Confidential”
16 or “Confidential—Attorneys’ Eyes Only” on the record, the court reporter
17 shall indicate on the cover page of the transcript that the transcript includes
18 Confidential or Confidential—Attorneys’ Eyes Only information, shall list
19 the pages and lines numbers and/or exhibits of the transcript on or in which
20 such information is contained, and shall bind the transcript in separate
21 portions containing Confidential, Confidential—Attorneys’ Eyes Only, and
22 non-Confidential material. Further, during the period in which such
23 Confidential or Confidential—Attorneys’ Eyes Only information is
24 discussed during the deposition, any person present during the deposition
25 who is not a Qualified Person, as defined below, or the court reporter, shall
26 be excluded from that portion of the deposition.

27 b. A deposition transcript and the exhibits thereto shall be
28 presumed Confidential—Attorneys’ Eyes Only in their entirety until twenty

1 one (21) days after receipt of the transcript by the producing party. If, after
2 the deposition is taken, the producing party designates any portion of the
3 deposition transcript or exhibits as “Confidential” or “Confidential—
4 Attorneys’ Eyes Only” by giving written notice as described above, all
5 persons receiving notice of such designation shall affix the same to the face
6 of their copy or copies of the transcript. At the expiration of the twenty one
7 (21) day period, the transcript and exhibits shall automatically revert to non-
8 Confidential status, except those portions that have been designated on the
9 record or in writing as “Confidential” or “Confidential—Attorneys’ Eyes
10 Only.” Nothing in this paragraph is intended to restrict any Party’s right to
11 attend depositions pursuant to paragraph 7 hereof.

12 c. A non-producing party may designate documents, information,
13 or things disclosed at a deposition as “Confidential” or “Confidential—
14 Attorneys’ Eyes Only” in the same manner as a producing party if it has a
15 good faith basis for claiming a proprietary interest or other right in the
16 Confidential Material.

17 5. Material designated as confidential under this Protective Order, the
18 information contained therein, and any summaries, copies, abstracts, or other
19 documents derived in whole or in part from material designated as confidential
20 (hereinafter “Confidential Material”) shall be used only for the purpose of the
21 prosecution, defense, or settlement of this action, and for no other purpose, except
22 that a Party may seek permission from another court to use Confidential Material
23 produced under this Protective Order provided said Party gives advance notice to
24 the parties whose materials are sought to be used and provided no disclosure of
25 such Confidential Material is made until such other court grants the request for
26 permission. The restrictions contained in this paragraph No. 5 may be modified by
27 written agreement of the parties, but such modifications will not be considered part
28 of this order unless approved by the Court. Nothing in this paragraph shall operate

1 to bar motions in limine or similar motion to exclude the use of any document in
2 any action between the Parties on any appropriate and available basis.

3 6. Confidential Material produced pursuant to this Protective Order may
4 be disclosed or made available only to the Court, to counsel for a Party (including
5 the paralegal, clerical, and secretarial staff employed by such counsel), and to the
6 “qualified persons” designated below:

7 a. ABDELMASEH in his individual capacity, and as officer
8 and/or director of GOLD STAR;

9 b. Hany Gemian, as officer and/or director of GOLD STAR;

10 c. two officers or directors of STARBUZZ, or full-time
11 employees designated in writing as a representative of STARBUZZ who
12 have supervisory responsibility for this matter and is necessary to the
13 prosecution, defense, or settlement of this action, namely: Wael Elhalwani,
14 and Majda Haddoudi;

15 d. experts or consultants (together with their clerical staff) retained
16 by such counsel to assist in the prosecution, defense, or settlement of this
17 action, including outside photocopying, imaging, data base, graphics or
18 design services retained by outside counsel in connection with this action
19 who have signed the “Acknowledgement and Agreement to be Bound” that
20 is attached hereto as Exhibit A;

21 e. court reporter(s) employed in this action; and

22 f. any other person as to whom the parties in writing agree who
23 have signed the “Acknowledgement and Agreement to be Bound” that is
24 attached hereto as Exhibit A.

25 Prior to receiving any Confidential Material, each “qualified person” defined
26 in (a), (b), (c), (d) and (e) above shall be provided with a copy of this Protective
27 Order and shall execute and be bound by this Protective Order by signing a
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1 nondisclosure agreement in the form annexed hereto as Exhibit A, a copy of which
2 shall be provided forthwith to counsel for each other party.

3 7. Subject to the Federal Rules of Civil Procedure and applicable law,
4 depositions may be taken in the presence of any persons, including Parties, but any
5 Party may request that (a) non-qualified persons leave the room for responses
6 containing any Confidential Material; and (b) Parties leave the room for responses
7 containing CONFIDENTIAL – ATTORNEYS’ EYES ONLY information. No
8 Party shall be entirely excluded from any deposition. This Order does not affect
9 applicable law regarding the attendance of depositions by non-party persons,
10 including potential witnesses.

11 8. Material designated “CONFIDENTIAL – ATTORNEYS’ EYES
12 ONLY” and the information contained therein, shall be disclosed only to the Court,
13 to outside counsel for the Parties (including the paralegal, clerical, and secretarial
14 staff employed by such counsel) and to the “qualified persons” listed in
15 subparagraphs 6(d) through (f) above, but shall not be disclosed to a Party, or to an
16 officer, director or employee or a Party, except as provided above or unless
17 otherwise agreed in writing or ordered by the Court. If disclosure of Attorneys’
18 Eyes Only Material is made pursuant to this paragraph, all other provisions in this
19 order with respect to confidentiality shall also apply.

20 9. Copies of Confidential or Confidential—Attorneys’ Eyes Only
21 material may be submitted to the Court in connection with any proceedings,
22 motions or hearings, provided that such materials are filed along with an
23 application to have those materials filed under seal. The application must show
24 good cause for the under seal filing. To the extent possible, only those portions of
25 a filing with the Court that contain material designated as “Confidential” or
26 “Confidential—Attorneys’ Eyes Only” shall be filed under seal. To the extent that
27 no Confidential or Confidential—Attorneys’ Eyes Only information is disclosed,
28 the parties may refer to, and quote from, documents designated as “Confidential”

1 or “Confidential—Attorneys’ Eyes Only” in pleadings, motions, briefs, affidavits,
2 or exhibits filed with the Court, without the need to file such pleadings, motions,
3 briefs, affidavits, or exhibits under seal. A Party’s counsel shall not unilaterally
4 decide that material that the other Party designated as “Confidential” or
5 “Confidential—Attorneys’ Eyes Only” does not contain any Confidential or
6 Confidential—Attorneys’ Eyes Only information. If a Party’s counsel disagrees
7 with a designation, that counsel shall follow the procedures described in paragraph
8 11 of this Order to challenge the designation.

9 10. In the event that any Confidential Material is used in any court
10 proceeding in this action, the Party using such material shall take all steps
11 reasonably available to protect its confidentiality during such use.

12 11. At any stage of these proceedings, should any party object to a
13 designation of any information, documents, or things as “Confidential” or
14 “Confidential—Attorneys’ Eyes Only,” the Party shall provide written notice of its
15 objection with the designation. The parties and/or the producing party shall first
16 attempt to resolve such objection in good faith on informal basis. If the objection
17 is not thereby resolved, the objecting Party may apply for a ruling from the Court
18 pursuant to Local Rule 37 determining whether the materials in question are
19 properly designated under the terms of this Protective Order. Until the Court
20 makes such determination, all material designated as “Confidential” or
21 “Confidential—Attorneys’ Eyes Only” shall be treated as such.

22 12. Nothing in this Protective Order shall preclude any party to the
23 lawsuit or their attorneys from:

24 a. Showing materials designated as “Confidential” or
25 “Confidential—Attorneys’ Eyes Only” to an individual who either prepared
26 or reviewed the document prior to the filing of this action, or is shown by the
27 document to have received the document;
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1 b. Disclosing or using, in any manner or for any purpose, any
2 information, documents, or things from the Party's own files that the Party
3 itself designated as "Confidential" or "Confidential—Attorneys' Eyes
4 Only";

5 c. Disclosing or using, in any manner or for any purpose, any
6 information, documents, or things that were obtained from a source other
7 than discovery or to which a Party has a right of access independent of
8 discovery, or that were already known to such Party by lawful means, prior
9 to obtaining from or disclosure by, the other Party in the action, provided,
10 however, that the alternate source of such information, documents or things
11 was not under an obligation of confidentiality (as evidenced by a writing) to
12 a Party in the litigation at the time such information, documents or things
13 were obtained; or

14 d. Disclosing or using, in any manner or for any purpose, any
15 information, document, or thing that is at the time of production or
16 disclosure, or subsequently becomes, through no wrongful act or failure to
17 act on the part of the receiving party, generally available to the relevant
18 public through publication or otherwise or is already rightfully in the
19 possession of the receiving party at the time of production; or

20 13. If either party is served with a subpoena or similar process, from any
21 entity whatsoever, directing that Party to produce any materials designated as
22 "Confidential" or "Confidential—Attorneys' Eyes Only" not so designated by that
23 Party, the counsel for that Party shall immediately give counsel for the designating
24 party written notice, by hand delivery or facsimile transmission, of the fact of such
25 service so that the designating Party may seek a protective order or otherwise act to
26 protect the confidentiality of the designated materials.

27 14. This Protective Order is entered solely for the purpose of facilitating
28 the exchange of documents and information between the parties to this action

1 without involving the Court unnecessarily in the process. Nothing in this
2 Protective Order nor the production of any information or document under the
3 terms of this Protective Order nor any proceedings pursuant to this Protective
4 Order shall be deemed to have the effect of an admission or waiver by either Party
5 or of altering the confidentiality or non-confidentiality of any such document or
6 information or altering any existing obligation of any Party or the absence thereof.

7 15. This Protective Order shall survive the final termination of this action,
8 to the extent that the information contained in Confidential Material is not or does
9 not become known to the public, and the Court shall retain jurisdiction to resolve
10 any dispute concerning the use of information disclosed hereunder. Within thirty
11 (30) days of the conclusion of this action, including any appeals, counsel for the
12 parties shall assemble and return to each other all documents, material and
13 deposition transcripts designated as confidential and all copies of same, or shall
14 certify the destruction thereof. Notwithstanding this provision, Counsel are
15 entitled to retain an archival copy of all pleadings, motion papers, transcripts, legal
16 memoranda, correspondence or attorney work product, even if such material
17 contain Confidential Material, for the period of one (1) year. Any such archival
18 copies that contain or constitute Confidential Material remain subject to this
19 Protective Order.

20 16. The inadvertent or unintentional disclosure by the Producing Party of
21 attorney-client privileged information or attorney work-product, either by way of
22 document production or deposition testimony, shall not be deemed a waiver of
23 privilege for such information, provided that the Producing Party promptly makes
24 a good-faith representation that such production was inadvertent or mistaken and
25 takes prompt remedial action to withdraw the disclosure. Within three (3) business
26 days of receiving a written request to do so from the Producing Party, the
27 Receiving Party shall return to the Producing Party any documents or tangible
28 items that the Producing Party represents are covered by a claim of attorney-client

1 privilege or work product immunity and were inadvertently or mistakenly
2 produced. The receiving party shall also destroy any extra copies or summaries of,
3 or notes relating to, any such inadvertently or mistakenly produced information,
4 and certifying compliance with this provision; provided, however, that this
5 Protective Order shall not preclude the Party returning such information from
6 making a motion to compel production of the returned information pursuant to
7 Local Rule 37. The Producing Party shall retain copies of all returned documents
8 and tangible items for further disposition and, if such a motion is filed, shall
9 provide copies to the Court of the documents, item or information which is the
10 subject of the motion. In the event that a Producing Party discovers in a
11 deposition, inadvertently or unintentionally disclosed documents containing
12 attorney-client privileged information or attorney work-product, the Producing
13 Party may make a request on the record for the receiving party to return the
14 documents or tangible items that the Producing Party represents 1) are covered by
15 a claim of attorney-client privilege or work product immunity and 2) were
16 inadvertently or mistakenly produced; in which event, the receiving party shall be
17 precluded from deposing a witness with respect to such inadvertently or mistakenly
18 produced documents, other than to explore the basis for a claim of privilege or
19 work product.

20 17. The inadvertent or unintentional disclosure by the Producing Party of
21 “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”,
22 information either by way of document production or deposition testimony,
23 regardless of whether the information was so designated at the time of disclosure,
24 shall not be deemed a waiver in whole or in part of a Party’s claim of
25 confidentiality as to the information disclosed. Any such inadvertently or
26 unintentionally disclosed “CONFIDENTIAL” and/or “CONFIDENTIAL-
27 ATTORNEYS’ EYES ONLY” information, not designated as such pursuant to
28 paragraph 1 or 2, shall be designated as “CONFIDENTIAL” or

1 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”, as soon as reasonably possible
2 after the Producing Party becomes aware of the inadvertent or unintentional
3 disclosure and provides written notice to the Receiving Parties. The Receiving
4 Party shall thereafter mark and treat the materials as “CONFIDENTIAL” or
5 “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” as appropriate, and such
6 materials shall be fully subject to this Protective Order as if they had been initially
7 so designated. The party who made such inadvertent or unintentional disclosure
8 shall request said person to which an inadvertent or unintentional disclosure was
9 made to execute the “Acknowledgement and Agreement to be Bound” that is
10 attached hereto as Exhibit A.

11 18. For documents produced pursuant to subpoena or subpoena duces
12 tecum or in other proceedings outside of open court or trial, that any party or non-
13 party believes should be designated “CONFIDENTIAL” or “CONFIDENTIAL-
14 ATTORNEY’S EYES ONLY”, that Designating Party shall have a right up to
15 twenty-one (21) days to designate the document to which protection is sought. The
16 twenty-one (21) day period shall run from the date the documents are produced by
17 the third party. During the initial fourteen (14) day period documents produced by
18 a third party shall be treated as “CONFIDENTIAL-ATTORNEY’S EYES ONLY”
19 until the twenty-one (21) day designation period has expired. Only those
20 documents that are appropriately designated for protection within the twenty-one
21 (21) days shall be covered by the provisions of this Protective Order. The
22 Designating Party shall be required to provide notice detailing those documents
23 that are being designated “CONFIDENTIAL” or “CONFIDENTIAL-
24 ATTORNEY’S EYES ONLY.”

25 19. This Protective Order is without prejudice to the right of any
26 interested party to apply to the Court for an order permitting the disclosure of any
27 “CONFIDENTIAL” and/or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY”
28

1 information, or to apply for an order modifying or limiting this Protective Order in
2 any respect.

3
4 **GOOD CAUSE STATEMENT**

5 20. In discovery in this case, the parties will be required to exchange
6 competitively sensitive information about the opposing parties' business activities
7 to which they and third parties would not otherwise have access, including
8 information regarding the parties' business proprietary and/or confidential
9 information. Allowing the parties or third parties to use such competitively
10 sensitive information would cause harm to the competitive position of the
11 disclosing party. The parties seek the entry of this Protective Order to prevent the
12 unauthorized use or dissemination of confidential information produced in
13 discovery during this action by competitors.

14 a. No document, information, or thing shall be designated
15 "CONFIDENTIAL" or "CONFIDENTIAL – ATTORNEYS' EYES ONLY"
16 unless good cause exists for such designation under the standards set forth in
17 *Phillips v. G.M. Corp.*, 307 F.2d 1206, 1209 (9th Cir. 2002) and other
18 relevant authority. Good cause exists for the designation of information as
19 "CONFIDENTIAL – ATTORNEYS' EYES ONLY" when the information
20 has not been made public and falls into one of the categories identified in
21 paragraph 2 hereof.

22 b. Good cause exists for the designation of information as
23 "CONFIDENTIAL" when the information has not been revealed to the
24 public and the information falls into one of the categories identified in
25 paragraph 1 hereof.

26 c. The Parties shall use reasonable efforts to minimize the amount
27 of material designated as "CONFIDENTIAL" or "CONFIDENTIAL –
28 ATTORNEYS' EYES ONLY."

d. This Protective Order applies to such “CONFIDENTIAL” and “CONFIDENTIAL – ATTORNEYS’ EYES ONLY” information furnished in this litigation regardless of the form in which it is transmitted and regardless whether the information is furnished by a party or third party. Such information may be contained in documents, written discovery responses, declarations, deposition testimony, exhibits, and other materials or deposition testimony provided by any Party.

IT IS SO ORDERED at Santa Ana, California this 13th day of June, 2019.

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DOUGLAS F. McCORMICK
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare
under penalty of perjury that I have read in its entirety and understand the Protective
Order that was issued by the District Court for the Central District of California in
the case of *Starbuzz Tobacco, Inc. v. Gold Star Tobacco Inc., et al.*, Case No.
8:19-cv-0408 JVS-DFMx. ***I agree to comply with and to be bound by all the terms
of this Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt.***

I solemnly promise that I will not disclose in any manner any information or
item that is subject to the Protective Order to any person or entity except in strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the District Court for the Central
District of California for the purpose of enforcing the terms of this Protective Order,
even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name]
of _____ [print or
type full address and telephone number] as my California agent for service of process
in connection with this action or any proceedings related to enforcement of this
Protective Order.

Date: _____

Printed Name: _____

Signature: _____